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08 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

09 CHARLES V. FARNSWORTH, ) Case No. 07-2085-RSM-JPD  
10 )  
11 Petitioner, )  
12 )  
13 v. )  
14 WARDEN PALMQUIST, ) REPORT AND RECOMMENDATION  
Respondent. )  
\_\_\_\_\_ )

15 I. INTRODUCTION AND SUMMARY CONCLUSION

16 Petitioner Charles V. Farnsworth, proceeding *pro se*, is currently in custody at the  
17 Federal Detention Center in SeaTac, Washington (“FDC SeaTac”). He has filed with this  
18 Court a proposed petition for writ of habeas corpus under 28 U.S.C. § 2241, together with an  
19 application to proceed *in forma pauperis* (“IFP”) in this action. Dkt. Nos. 4, 5. Petitioner  
20 asserts in his petition that respondent and the staff at FDC SeaTac have hindered his  
21 ability to represent himself in his ongoing federal criminal proceedings by denying his requests  
22 for necessary legal supplies. Dkt. No. 5 at 4-5.<sup>1</sup> Petitioner contends that respondent has  
23 violated his rights to due process, equal protection, access to the courts, and effective  
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26 <sup>1</sup> These supplies include paper clips, rubber bands, carbon paper, photocopies “beyond  
an arbitrary limit,” oversized envelopes, white-out, typewriter ribbon, “paper cutters,” highlighters,  
colored paper, and access to computer-based legal research. Dkt. No. 5 at 4-5.

01 assistance of counsel. Dkt. No. 5 at 1. He requests that necessary legal supplies be provided  
02 to him or, in the alternative, that he be released from confinement. Dkt. No. 5 at 5.

## 03 II. DISCUSSION

### 04 A. Petitioner Claims Are Not Cognizable Under § 2241

05 United States Code Title 28, Section 2241 confers jurisdiction on a federal district  
06 court to issue a writ of habeas corpus when a federal or state prisoner establishes that he or she  
07 “is in custody in violation of the Constitution or laws or treaties of the United States.” 28  
08 U.S.C. § 2241(a), (c)(3). An issued writ must be directed “to the person having custody of the  
09 person detained.” *Id.* § 2243; *see also Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004)  
10 (same under § 2255); *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (same under  
11 § 2254); Rules Governing Section 2254 Cases in the United States District Courts 2(a). The  
12 custodian is the person commanded in this regard, and the law will substitute no other. *See*,  
13 *e.g., Pennsylvania Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 39 (1985). For  
14 inmates and detainees, this person is typically the warden of the facility in which the petitioner  
15 is confined. *Ortiz-Sandoval*, 81 F.3d at 894.

16 This Court may dismiss the petition and not entertain the writ if “it appears from the  
17 application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. In  
18 *Preiser v. Rodriguez*, 411 U.S. 475 (1973), the United States Supreme Court explained that  
19 “the essence of habeas corpus is an attack by a person in custody upon the legality of that  
20 custody, and that the traditional function of the writ is to secure release from illegal custody.”  
21 *Id.* at 484; *see also Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005) (same).

22 Here, petitioner appears to be challenging events relating to the *conditions*, not the  
23 *validity* or *legality*, of his confinement. Such claims may be brought in an action under *Bivens*  
24 *v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), but are not cognizable in an  
25 action brought under § 2241. *See Wilkinson v. Dotson*, 544 U.S. 74, 78-81 (2005).  
26 Consequently, petitioner’s § 2241 petition, in its current form, should be dismissed without

01 prejudice for failure to allege grounds that would entitle him to habeas relief of any kind.

02 B. Attempt to Avoid “Three Strikes” Rule of 28 U.S.C. § 1915(g)

03 Pursuant to the Prison Litigation Reform Act (“PLRA”), a prisoner who brings three or  
04 more non-habeas civil actions that are dismissed as frivolous, malicious, or for failure to state a  
05 claim is precluded from bringing any other civil action IFP unless the prisoner is “under  
06 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

07 Plaintiff is a prolific litigator who has filed more than twenty lawsuits in federal court,  
08 many of which have been filed in this district. *See Farnsworth v. Pierce County Sheriff*, Case  
09 No. C04-5780-RBL-JKA, Dkt. No. 43 (W.D. Wash.) (collecting cases). At least two lawsuits  
10 filed in this district, and three including other districts, have been dismissed as frivolous,  
11 malicious, or for failure to state a claim. *See, e.g., Farnsworth v. Carter*, Case No.  
12 C05-5139-FDB (W.D. Wash.); *Farnsworth v. Pierce County*, Case No. C05-5177-RBL (W.D.  
13 Wash.); *Farnsworth v. Glad*, Case No. C94-774 (C.D. Utah). Furthermore, there is no  
14 indication from the record that petitioner is “under imminent danger of serious physical injury.”  
15 28 U.S.C. § 1915(g).

16 Although frivolous habeas petitions normally may not be counted as “strikes” under the  
17 PLRA, an action that is filed as a habeas petition, but which actually challenges conditions of  
18 confinement, may be so counted. *See Andrews v. King*, 398 F.3d 1113, 1123 n.12 (9th Cir.  
19 2005) (citing *Jennings v. Natrona County Det. Ctr. Med. Facility*, 175 F.3d 775, 779 & n.2  
20 (10th Cir. 1999) (noting that habeas petition more appropriately construed as a § 1983 action  
21 is “countable as a strike”)). Accordingly, the Court cautions petitioner that his attempt to  
22 mislabel or disguise a *Bivens* or § 1983 claim as a habeas action will not save him from the  
23 penalties imposed by 28 U.S.C. § 1915(g) should he seek to advance the same allegations in a  
24 future civil rights complaint.

01 III. CONCLUSION

02 For the foregoing reasons, the Court recommends that petitioner's IFP application be  
03 DENIED and that his § 2241 petition be DISMISSED without prejudice. A proposed order  
04 accompanies this Report and Recommendation.

05 DATED this 8th day of February, 2008.

06   
07 JAMES P. DONOHUE  
08 United States Magistrate Judge  
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